

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

ROBERT ALLEN,

Plaintiff,

V.

EUGENE MCADORY, et al.,

Defendants.

Civil No. **04-12-CJP**

ORDER

PROUD, Magistrate Judge:

Before the Court is plaintiff Allen’s objection to the final pretrial order. **(Doc. 55).** The Court construes the motion as one to amend the final pretrial order to include plaintiff’s deposition transcript as one of plaintiff’s proposed exhibits, and to add Assistant Attorney General Carrie Kinsella as a witness. Defendant objects that plaintiff’s deposition should not be permitted to be used as direct evidence. Defendant further argues Kinsella has no direct knowledge of the events at issue, and counsel’s conversations with the defendants is privileged. **(Doc. 57).**

Plaintiff was given an opportunity to participate in the formulation of the final pretrial order, but he declined to do so. However, plaintiff did not receive a copy of his deposition until the close of the pretrial conference. Therefore, there is good cause for permitting plaintiff to add his deposition to his exhibit list has been shown. That is not to say that the deposition will be permitted to come into evidence. The Court will note defendant's objection and the ultimate

admissibility of the deposition will be determined at trial, based on the Federal Rules of Evidence.

Plaintiff has not explained how Assistant Attorney General Kinsella's testimony is relevant to the issues set for trial. Therefore, plaintiff's motion is not well taken. The Court will remain open to reconsideration of this issue at trial.

IT IS THEREFORE ORDERED, that the subject motion to amend the final pretrial order to include plaintiff's deposition as an exhibit (**Doc. 55**) is **GRANTED IN PART AND DENIED IN PART**. The final pretrial order (**Doc. 47**) is hereby amended to include plaintiff's deposition on plaintiff's exhibit list, albeit with an objection from the defendant. Assistant Attorney General Carrie Kinsella will not be added to plaintiff's list of potential witnesses, as there has been no showing of relevance.

IT IS SO ORDERED.

DATED: July 30, 2007

s/ Clifford J. Proud

CLIFFORD J. PROUD

U. S. MAGISTRATE JUDGE